

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

PETE DILL A.K.A. DARRYL TUCKER

CIVIL ACTION NO. 05-0328

-vs-

JUDGE LITTLE

WARDEN ROBERT TAPIA

Judgment and Order

Before the court is a report and recommendation by the magistrate suggesting that the *habeas corpus* petition of Pete Dill (“Dill”) be transferred to the United States Court of Appeals for the Third Circuit. After full record review, the court adopts the reasoning of the magistrate, but adopts a different conclusion. Although Dill’s petition is presented as a 28 U.S.C. § 2244 petition, it is, in substance, a successive 28 U.S.C. § 2255 petition. This court, therefore, is without jurisdiction to consider this matter. Id. While 28 U.S.C. § 1631 allows the court to transfer the above captioned case to the United States Court of Appeals for the Third Circuit – the court in which it should have been filed – transfers pursuant to § 1631 should be made only “if it is in the interest of justice.” Dill does not allege that there is new evidence or a new rule of constitutional law sufficient to warrant his filing a successive § 2255 petition, therefore, the court finds that the interests of justice do not favor transferring his petition. Dill’s petition is DENIED and DISMISSED WITHOUT PREJUDICE

because this court is without jurisdiction to consider it; he may file his petition with the appropriate court, the United States Court of Appeals for the Third Circuit.

Alexandria, Louisiana

22 July 2005

A handwritten signature in black ink, appearing to read "F. A. Little, Jr."

F. A. LITTLE, JR.
UNITED STATES DISTRICT JUDGE